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1. Examiner R. K. Doan	USPTO GAU 3732 U.S.S.N. 10/670,027 Conf. No. 4552	571-273-8300	571-272-4711

Date	Our Reference Number
June 16, 2006	6896-07
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Total number of pages, including cover letter: 5

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4 pages - Response to Office Action

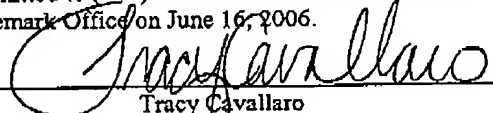
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Application Number: 10/670,027
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Tracy CavallaroIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Kemp et al.

Serial No.: 10/670,027

Filing Date: September 25, 2003

For: **Toothbrush Assembly**

Examiner: Robyn Kieu Doan

Art Unit: 3732

Confirmation No.: 4552

Attorney Docket No.: 6896-07

June 16, 2006

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action dated April 17, 2006, and made Final, please
consider the following remarks.

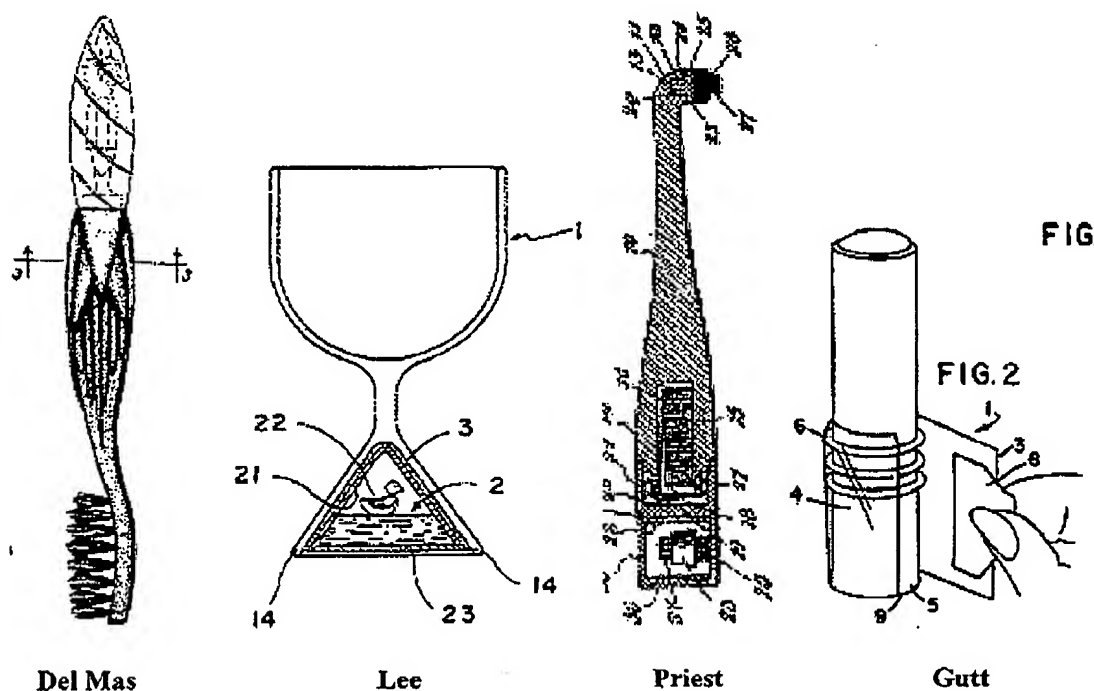
Currently, only claim 14 is independent and is set forth as follows:

14. A toothbrush assembly, comprising:
 - a head connected to a neck, said head having a plurality of bristles extending outwardly therefrom;
 - a handle connected to said neck, said handle having a compartment provided therein; and
 - a figurine being provided and held stationary in the compartment; wherein said handle comprises two sections which may be connected and disconnected whereby said figurine may be removed and replaced in the compartment, the junction of the two sections being covered by an indicia band;

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wherein the two sections are transparent to make said figurine visible within the compartment of said handle.

The Office Action of April 17, 2006, included several rejections under 35 U.S.C. §103(a). Most notably is that claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over Del Mas '680 in view of Lee '021 in view of Priest (U.S. Patent 1,847,496) and Gutt (U.S. Patent 5,257,704), totaling four (4) combined references. Some §103(a) rejections, such as to claims 16-17, assert the combination of five (5) separate references. With respect to the §103(a) rejection to claim 14, such references are illustrated below:



The Examiner's rejections appear to be based on the basic premise that as long as a claim element per se is shown in the art, it would be obvious to incorporate it into combined prior art to render the claimed invention obvious. Applicant respectfully submits that you

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can't simply pick elements from the prior art simply because they function in a similar manner, and then have all of such elements in combination form the basis of a §103(a) rejection to achieve the end result of the claimed invention.

The above-referenced lineup of dissimilar prior art demonstrates another basic premise that a prima facie case of obviousness must be supported by a teaching or motivation in the references to make the asserted combination. While there is no bright line rule, there is a rule of thumb that recognizes that such a motivation or teaching becomes increasingly harder to demonstrate as the number of asserted references increases beyond two or three references, because the required teaching or motivation becomes almost impossible to substantiate. The fact that the separate elements of claim 14 are common structures used in different products, such as an indicia band shown in Gutt, does not necessarily translate into its applicability to the claimed invention, absent a teaching or motivation as required by the law.

In order to establish a case of prima facie obviousness there must be shown a motivation to combine the teachings of the cited references, and/or a suggestion of the desirability to combine the references must be found and demonstrated in the references. This burden cannot be satisfied by simply asserting that the modification would have been "well within the ordinary skill of the art."

Applicant respectfully submits that the Examiner's arguments are not substantiated by any motivation or teaching shown or demonstrated in the combined references, but are instead governed by pure convenience. This is evidenced by the fact that none of the arguments bear any relationship to portions or passages in such references, but are instead conclusory at best and sometimes irrelevant to the claimed invention. For instance, the Examiner states that "It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the handle having two sections as taught by Priest and to employ the indicia band as taught by Gutt into the handle of Del Mas in order to remove and replace the objects within the two sections as well as providing a tamperproof seal which includes information about the device." With respect to the Gutt reference for example, the Examiner extols the benefit

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of a tamperproof seal, which is the basis for the Gutt teaching. However, the claimed invention, and in particular the indicia band, has nothing to do with being tamperproof. Instead, the indicia band is simply referenced in the Applicant's specification as "provided at a middle portion of body 20 for displaying a toy logo." (page 9, lines 12-13 of the original specification).

Applicant respectfully requests reconsideration of all §103(a) rejections in view of a clear and demonstrated disconnect between the teachings of the references and the asserted motivation to combine the same to form the claimed invention. Simply put, the claimed invention should be deemed patentable absent a demonstrated teaching or motivation to combine the prior art as required by the law.

In addition, several claims are provisionally rejected on the ground of obvious-type double patenting over U.S. Applications 11/077,170 and 10/442,905. Applicant respectfully requests that these rejections be held in abeyance pending the finding of allowable claims, at which time Applicant will submit terminal disclaimers, if necessary, to overcome such rejections.

Reconsideration is respectfully requested.

Any fee due with this paper may be charged to Deposit Account No. 03-2455.

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Respectfully submitted,

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